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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GLENN ALLEN ALBRECHT,

Defendant and Appellant.

A143080

(San Mateo County  
Super. Ct. No. SC077661)

Defendant Glenn Albrecht entered no contest pleas to child molestation and child pornography after the court twice denied motions to quash a search warrant and suppress evidence under Penal Code section 1538.5. This appeal challenges the denial of those motions. We affirm.

**BACKGROUND**

On August 30, 2012, Judge Marta Diaz signed a warrant to search Albrecht's residence and computers for child pornography. An affidavit by San Bruno Police Officer Brenton Schimek supported issuance of the warrant with a description of the events leading to Albrecht's arrest.

On August 26, 2012, San Bruno Police Officer Arguel responded to the Target at the Tanforan Mall where he contacted Albrecht, who was suspected of "touching a young juvenile female." Albrecht was wearing a t-shirt that said "RUB ME FOR LUCK" and had a cell phone.

The next day, Officer Schimek watched video surveillance footage of the reported incident and a second incident at Target on the same day. The video showed Albrecht

loitering near the entrance to the store looking at a young girl and watching children in the mall's play area. Albrecht entered the store and walked to the toy department, where he stood in an aisle watching a 6-year-old girl (N.G.). He followed N.G. into an electronics aisle and then a clothing aisle, away from her mother. Albrecht bent down. The girl spun around "extremely fast," looked at Albrecht and returned to her mother. Albrecht rapidly walked away toward the exit.

As Albrecht was about to leave the store, his attention was drawn to something and he went back in. The second surveillance video showed him following a family with a 13 or 14-year-old girl. When the family stopped at the end of an aisle, Albrecht positioned himself behind the girl and appeared to look at her buttocks. After a few seconds he moved his left hand "and based on the juvenile female's reaction it appeared that he touched her buttocks."

Albrecht then left the Target, but returned after about 10 minutes. When he re-entered the store N.G. pointed him out to her parents. N.G.'s father chased Albrecht and fought with him until a store security officer arrived.

Officer Schimek interviewed N.G.'s parents. The girl's mother said she was briefly separated from N.G. while they were shopping. When she located N.G., the girl said " 'This man just grabbed my butt.' " They found N.G.'s father and went to look for a security officer, but as they were doing so N.G. spotted Albrecht and said "Mommy that's him!" N.G. was shaking and scared. As he was fighting with N.G.'s father, Albrecht denied that he touched her. N.G.'s mother picked out someone other than Albrecht from a photo lineup, but her father identified Albrecht.

A criminal history check on Albrecht disclosed a 2005 detention in Santa Clara for "Invasion of privacy, Secretly video taping juveniles." According to the Santa Clara police report, Albrecht was found with a video camera at the Great America Theme Park in "an area that high-risk sex offenders and pedophiles loiter in to assault and victimize unsuspecting children," and was detained for recording young girls playing in their bathing suits.

Officer Schimek also described his law enforcement experience, which included “over 50 investigations concerning the molestation of juveniles, rapes, sexual assaults, prowlers and other similar incidents,” as well as formal training at the Basic Peace Officers Standards and Training Academy at the College of San Mateo, where he received instruction regarding the sexual assault of juveniles. Officer Schimek had personally conducted multiple interviews with registered sex offenders and people accused of sexual assaults, and had discussed with those individuals “various aspects of their thought process and actions leading up to the incident and actions after the incident.”

Based on his training and experience and that of other law enforcement officers with whom he had spoken or whose reports he had read, Officer Schimek was aware that the following characteristics, among others, are generally found in varying combinations in people who engage in “sexually explicit conduct with minors”: (1) They view children as sexual objects and receive gratification from touching, being near, and viewing or possessing sexually explicit images of minors; (2) they collect sexually explicit images of minors; (3) they rarely dispose of these images and store them in multiple formats and locations including on hard drives and in their home; (4) they typically use explicit images of minors to relive fantasies or actual sexual encounters and to exchange with or sell to “people with similar interests”; (5) they go to great lengths to conceal their collection of illicit materials and may have passwords to access programs or control encryption written down in the vicinity of their computer; (6) they often maintain diaries of their sexual encounters with children; (7) they often collect toys, magazines and books appropriate for the age level of children they want to attract; and (8) they often use cameras and cell phones with cameras to photograph their victims.

The affidavit concluded with Officer Schimek’s opinion that, in light of the 2005 incident at Great America and the fact that Albrecht had a cell phone with him on the day of the Target incidents, “he may have used his cell phone to video and or photograph the victims from this case.” Schimek further opined, based on his training and experience and the information contained in his affidavit, that a search of Albrecht’s home would

result in the seizure of listed items including, among other things, Albrecht's "RUB ME FOR LUCK" t-shirt, his cell phone, diaries, cameras and video cameras, film, and printed or digital photographs.

The magistrate issued a search warrant based on the information contained in Officer Schimek's affidavit. On August 30, 2012, a police search of Albrecht's home produced the "Rub Me For Luck" t-shirt and over 9,000 pornographic images of children.

Albrecht was charged with two counts of committing a lewd or lascivious act on a child under 14 years old and one count of possessing child pornography, with an enhancement allegation for multiple victims. After two unsuccessful motions to quash the search warrant and suppress the evidence found in the search, he entered pleas of no contest to the charges in exchange for dismissal of a multiple victim allegation. This appeal timely followed.

## **DISCUSSION**

Albrecht contends the search warrant was not supported by probable cause. We disagree.

### **I. Legal Standards**

"The question facing a reviewing court asked to determine whether probable cause supported the issuance of the warrant is whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing. [Citations.] 'The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.' [Citation.] . . . 'In determining the sufficiency of an affidavit for the issuance of a search warrant the test of probable cause is . . . whether the facts contained in the affidavit are such as would lead a man of ordinary caution or prudence to believe, and conscientiously to entertain, a strong suspicion of the guilt of the accused.' [Citation.] The magistrate's determination of probable cause is entitled to deferential review." (*People v. Kraft* (2000) 23 Cal.4th 978, 1040–1041 (*Kraft*); *U.S. v.*

*Leon* (1984) 468 U.S. 897, 914 [there is “a strong preference for warrants” and “ ‘in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall’ ”].)

“We review a trial court’s ruling on a motion to suppress evidence under [Penal Code] section 1538.5 by applying the substantial evidence test to the factual determinations made by the court, with all presumptions favoring the trial judge’s findings.” (*People v. Manderscheid* (2002) 99 Cal.App.4th 355, 359.) “ ‘However, we use our independent judgment to determine whether those facts establish probable cause. [Citation.] We are prohibited from ordering the suppression of evidence unless federal constitutional standards require us to do so.’ ” (*People v. Lim* (2000) 85 Cal.App.4th 1289, 1296.)

## **II. The Warrant Was Supported By Probable Cause**

Albrecht argues there was insufficient probable cause for issuance of the warrant because there was no nexus between his actions at Target and the conclusion that child pornography would be found in his home. More specifically, he asserts Officer Schimek was not qualified to render an opinion about the psychological characteristics of “people who engage in sexually explicit conduct with minors,” and, in any event, that his conduct at Target “does not even come close to conduct which is sexually explicit.” We conclude the information in the affidavit established probable cause.

“[P]robable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would ‘warrant a man of reasonable caution in the belief,’ [citation], that certain items may be contraband or . . . useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A ‘practical, nontechnical’ probability that incriminating evidence is involved is all that is required.” (*Texas v. Brown* (1983) 460 U.S. 730, 742 (*Brown*).) “To establish probable cause, one must show a probability of criminal activity; a *prima facie* showing is not required. Also, ‘[t]he evidence must be seen and weighed as understood

by those versed in the field of law enforcement.’ ” (*People v. Von Villas* (1992) 11 Cal.App.4th 175, 217.)

The facts stated in Officer Schimek’s affidavit were adequate to establish probable cause for the search. Not only had Albrecht been observed apparently molesting two young girls on the day in question; he was also apprehended six years earlier videotaping young girls playing in their bathing suits at Great America. In addition, Officer Schimek knew from his training and experience in the field that child molesters tend to keep pornographic images of children in their home and on their computers and other digital devices. “[L]aw enforcement officers may draw upon their expertise to interpret the facts in a search warrant application, and such expertise may be considered by the magistrate as a factor supporting probable cause.” (*People v. Nicholls* (2008) 159 Cal.App.4th 703, 711–712 (*Nicholls*) [probable cause established by victim’s description of molestation, defendant’s storage of and concern about his computer, and officer’s testimony based on training, knowledge, and experience that child molesters tend to keep collections of pornographic images].)

As in *Nicholls*, numerous federal courts have found similar statements by affiant officers supported a probable cause finding. (See, e.g., *U.S. v. Gourde* (9th Cir. 2006) 440 F.3d 1065, 1072 [“[t]he details provided on the use of computers by child pornographers and the collector profile” supported probable cause]; *U.S. v. Riccardi* (10th Cir. 2005) 405 F.3d 852, 861 [probable cause based in part on “the observation that possessors often keep electronic copies of child pornography”]; *U.S. v. Lemon* (8th Cir. 2010) 590 F.3d 612, 615 [“Many courts, including our own, have given substantial weight to testimony from qualified law enforcement agents about the extent to which pedophiles retain child pornography”]; *U.S. v. Morales-Aldahondo* (1st Cir. 2008) 524 F.3d 115, 119.) Here, the officer’s testimony about the tendencies of pedophiles, together with evidence of Albrecht’s actions at Target and the earlier incident at Great America, provided a logical basis to believe child pornography would probably be found in his residence.

Albrecht argues the trial court should have disregarded the incident at Great America because it was stale. It was not required to do so. “The freshness of the information on the basis of which a warrant is sought and obtained, is one of the factors which determine whether there is probable cause to believe that the articles covered by the warrant will be found at the place that is to be searched.” (*People v. Hernandez* (1974) 43 Cal.App.3d 581, 586.) But, “[n]o clear cut rule, of course, tells us when the time span must be deemed too attenuated. ‘The length of the time lapse alone is not controlling since even a brief delay may preclude an inference of probable cause in some circumstances while in others a relatively long delay may not do so.’” (*Alexander v. Superior Court* (1973) 9 Cal.3d 387, 393.) While “ ‘there are obviously some limits’ ” (*ibid.*), “where there is evidence of an activity continuing over a lengthy period of time [citations] or the nature of the activity is such as to justify the inference that it will continue until the time of the search [citations] much longer periods between the gathering of information and application for a warrant [are] reasonable.” (*People v. Reed* (1981) 121 Cal.App.3d Supp. 26, 34.) The trial court could reasonably conclude that the Great America incident seven years earlier, combined with Albrecht’s current offenses, justified an inference that Albrecht had, and has, a longstanding and ongoing sexual interest in young girls.

Albrecht also maintains the 2007 videotaping incident was irrelevant because he was not arrested for it and “none of the video-recordings showed any child in sexually explicit positions.”<sup>1</sup> Neither observation matters. The incident supports inferences that Albrecht is sexually interested in young girls and that, in accordance with Officer Schimek’s description of typical pedophilic behavior, he would likely keep photographic images of young girls for purposes of sexual gratification. As a matter of common sense, it was thus relevant to the determination of probable cause.

Albrecht relies heavily on *United States v. Weber* (9th Cir. 1990) 923 F.2d 1338 (*Weber*) and *United States v. Zimmerman* (3rd Cir. 2002) 277 F.3d 426 (*Zimmerman*) in

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<sup>1</sup> Those recordings are not part of the record on appeal. We will not speculate about what they did or did not show.

support of his position that Officer Schimek’s affidavit did not establish probable cause to search his home. As Albrecht acknowledges, these federal cases are not binding on this court. They are also distinguishable. As noted in *Nicholls, supra*, 159 Cal.App.4th at p. 713: there was “not a whit of evidence” in *Weber* that the defendant was a child molester (923 F.2d at p. 1345), and in *Zimmerman* the government *conceded* there was no probable cause to search for child pornography. (277 F.3d at p. 432.)

Albrecht also contends the evidence that people who engage in “sexually explicit conduct with minors” tend to collect child pornography did not support probable cause because his conduct at Target was not “sexually explicit,” as that term is defined in federal statutes.<sup>2</sup> But, as noted, probable cause is “a flexible, common-sense standard. . . . A ‘practical, nontechnical’ probability that incriminating evidence is involved is all that is required.” (*Brown, supra*, 460 U.S. at p. 742.) A federal statute defining “sexually explicit” material for purposes of certain federal offenses does not inform the application of that common sense standard.

We are satisfied the affidavit conveyed probable cause for the search. We add that, even if it did not, this is a classic case for application of the good faith exception to the exclusionary rule established in *United States v. Leon* (1984) 468 U.S. 897. Albrecht argues the warrant was so lacking in indicia of probable cause that Officer Schimek’s belief in its existence was unreasonable. Not so. Stated most favorably to Albrecht, the

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<sup>2</sup> Title 18, Section 2256 (2) of the U.S. Code defines ‘sexually explicit conduct’ to mean “actual or simulated—[¶] (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; [¶] (ii) bestiality [¶] (iii) masturbation; [¶] (iv) sadistic or masochistic abuse; or [¶] (v) lascivious exhibition of the genitals or pubic area of any person; [¶] (B) For purposes of subsection 8(B) of this section, “ ‘sexually explicit conduct’ ” means--[¶] (i) graphic sexual intercourse, including genital-genital, oral- genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited; [¶] (ii) graphic or lascivious simulated; [¶] (I) bestiality; [¶] (II) masturbation; or [¶] (III) sadistic or masochistic abuse; or [¶] (iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person.” (Footnote omitted.)



facts presented in the affidavit presented an arguably close case as to whether probable cause existed for the search. In other words, this is at worst an issue upon which reasonable minds might differ. (See *Nicholls, supra*, 159 Cal.App.4th at pp. 711–712; *United States v. Falso* (2nd Cir. 2010) 544 F.3d 110, 128–129 (Sotomayor, J.) [officer’s reliance on defective warrant was not unreasonable where there was a split of authority on the existence of probable cause in similar cases]; see also *United States v. Colbert* (8th Cir. 2010) 605 F.3d 573, 577–579 [split of authority on whether evidence of pedophilic tendencies can support warrant to search for child pornography].) Given the factual basis presented in the affidavit, the magistrate’s issuance of the search warrant, and the unsettled nature of the probable cause question even in closer cases, Officer Schimek’s reliance on the warrant cannot be viewed as unreasonable.

#### **DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.